It was clear therefore that the issue between the parties was whether or not on the 30th April 1965, when the horse died, there was a policy of insurance in force. The appellants said there was no policy in force whereas the respondent said there was.

Buttrose J. in a short judgment said:—

"I am of the opinion in this case that this is a matter which falls within the provisions of clause 10 of the policy of insurance and is a proper one for the decision of an arbitrator appointed thereunder."

The appellants contend that Buttrose J. was wrong in that until the issue whether or not there was a policy of insurance in force at all has been determined there can be no basis for the appointment of an arbitrator under the terms of clause 10 of the policy.

It is settled law that where the dispute is as to whether a contract, which contains an arbitration clause in the widest and most usual form such as "arising out of" or "under" or "with regard to" the contract, was entered into at all that issue cannot go to arbitration under the clause. The reason why such an issue cannot go to arbitration is because in the words of Viscount Simon L.C. in *Heyman* v. *Darwins, Ltd.*[1] at page 343 "the party who denies that he has ever entered into the contract is thereby denying that he has ever joined in the submission". In the words of Lord Macmillan, *ibid*, at page 345 "If there has never been a contract at all, there has never been as part of it an agreement to arbitrate; the greater includes the less."

Mr. Smith for the respondent contends, however, that clause 10 read with the policy itself, which provides that "if at any time during the period in the schedule or during any other period for which the company may accept payment for the renewal of this policy, any animal . . . shall die . . . then the company will . . . pay . . . the loss which the insured shall suffer . . .", is wide enough to give jurisdiction to the arbitrator in the circumstances of this case. The fallacy in that argument seems to me to be that it pre-supposes either that the appellants do not deny that there was a contract between the parties at the relevant date, or, if they deny it, that the court in the present proceedings could decide that issue and would decide it in favour of the respondent.

It seems to me that if the decision of Buttrose J. appointing an arbitrator is right, then, if the arbitrator found there was no contract in existence at all and no right to sue on the policy dated 5th May 1964 as at the material date, he would be deciding that the arbitration clause which founded his jurisdiction never existed and therefore he never could have had any jurisdiction to deal with that matter. On the authority of *Toller* v. *Law Accident Insurance Society, Ltd.*[2] I am of the opinion that the order made by Buttrose J. cannot stand.

For all these reasons I would allow this appeal and set aside the order of Buttrose J.

Tan Ah Tah F.J. and **Chua J.** concurred.

Appeal allowed.

Solicitors: *Rodyk & Davidson; L. A. J. Smith.*

GOVERNMENT OF SINGAPORE v. KOH ENG KIAT

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Chua J.) October 18, 1966]

[Singapore — Federal Court Civil Appeal No. Y11 of 1966]

Practice and Procedure — Service outside jurisdiction — No leave obtained — Service in Malaysia — Courts of Judicature Act, 1965, s.7(2) — Republic of Singapore Independence Act, 1965, s.13.

The plaintiff (appellant herein) had commenced an action against the defendant (respondent) who resided in Malaysia. The writ was issued and served without first obtaining the leave of the High Court, by a process server of the High Court of Malaya, on the defendant's solicitors who accepted service on his behalf. A conditional appearance was entered and subsequently an application was made to set aside the service of the writ on the ground that the provisions of R.S.C., 1934, O. XI had not been complied with. The learned judge who heard the application set aside the service of the writ and the plaintiff appealed. The appellant contended that section 7(2) of the Courts of Judicature Act, 1964 of Malaysia which was in force in Singapore, expressly permitted all summonses respecting any case or matter within the jurisdiction of the High Court of Singapore to be served anywhere within Malaysia and therefore overrides the provisions of O. XI of the Rules of the Supreme Court.

Held: section 7(2) of the Courts of Judicature Act, 1964 must be so construed as to bring it into conformity with the Republic of Singapore Independence Act, 1965, and with the independent status of Singapore upon separation from Malaysia so as to limit its territorial scope to Singapore and therefore leave should have been obtained under O. XI of the Rules of the Supreme Court for the service of the writ in Malaysia.

FEDERAL COURT.

Wee Han Kim (State Counsel) for the appellant.

Goh Heng Leong for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering judgment of the court): The Government of Singapore commenced an action in the High Court of Singapore by way of a specially indorsed writ of summons against Koh Eng Kiat who resides in Malaysia, a foreign country, at No. 67 Jalan Templer, Petaling Jaya, Kuala Lumpur which was the address stated on the writ.

The writ was issued and served without first obtaining the leave of the High Court of Singapore, by a process server of the High Court of Malaya, on the defendant's solicitors who accepted service on his behalf. A conditional appearance was entered and subsequently an application was made to the High Court of Singapore to set aside the service of the writ on the ground that the provisions of Order XI of the Rules of the Supreme Court 1934 had not been complied with. Buttrose J. who heard the application made an order setting aside the service of the writ and the plaintiff now appeals against this order.

The appellant's contention is that section 7(2) of the Courts of Judicature Act 1964 of Malaysia (hereinafter referred to as "the Malaysian Act"), which enactment is still law in Singapore by virtue of section 13 of the Republic of Singapore Independence Act 1965 (hereinafter referred to as "the Singapore Act"), expressly permits all summonses respecting any cause or matter within the jurisdiction of the High Court of Singapore to be served anywhere within Malaysia and therefore overrides the provisions of Order XI. Section 7(2) of the Malaysian Act provides as follows:—

"7. (2) All summonses, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by or by the authority of any court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaysia."

The material provisions of section 13 of the Singapore Act are as follows:—

"13. (1) Subject to the provisions of this section all existing laws shall continue in force on and after Singapore Day, but all such laws shall be construed as from Singapore Day with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia.

(7) In this section —

'existing law' means any law including written law having effect as part of the law of Singapore prior to Singapore Day; and

'written law' includes the Constitution of Malaysia and the Constitution of Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore."

We are unable to accept the appellant's contention. Although section 13 of the Singapore Act provides that all existing laws shall continue in force on or after Singapore Day (i.e. 9th August 1965), it also expressly requires that all such laws shall be construed as from that day "with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia."

Section 7(2) of the Malaysian Act must therefore be so construed as to bring it into conformity with the Singapore Act and with the independent status of Singapore upon separation from Malaysia. Would it be in conformity with the Singapore Act and with the independent status of Singapore upon separation from Malaysia to construe section 7(2) literally? A literal construction would have the effect of saying that the legislature of the Republic of Singapore has asserted the right to enact legislation giving full force and effect to, and enabling service and execution of, outside its own territory and within the territory of another independent country, all "summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal" issued or made by or by the authority of any of its courts. In our opinion unless, in the context of the Singapore Act, the language of its section 13(1) is clear and unambiguous, it would be wrong to place a construction on section 7(2) of the Malaysian Act that would have such an effect.

Having regard to the mandatory requirement of section 13(1), we are of the opinion that the proper construction to be placed on section 7(2) of the Malaysian Act would be to modify it so as to limit its territorial scope to Singapore and that to construe section 7(2) literally would be in disregard of that mandatory requirement and would not bring it into conformity with the Singapore Act and with the independent status of Singapore upon separation from Malaysia.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Allen & Gledhill.*

SHAW SUNG CHING v. HASSAN NAMAZIE

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Ambrose J.) October 19, 1966]

[Singapore — Federal Court Civil Appeal No. Y12 of 1965]

Land Laws — Land — Adverse possession — Onus of proof — When adverse possession commenced — Limitation Ordinance, 1959, ss. 9 and 18.

This was an appeal against the judgment of the trial judge declaring that the plaintiff (respondent herein) was entitled to possession of a parcel of land occupied by the defendant. The facts in the case were shortly that the two lots of land originally belonged to one owner, who let one of the lots to the defendant (appellant herein) in 1945. The defendant occupied not only the lot let out to him but also the disputed area. Subsequently in 1960 the disputed lot was sold to one Mohamed bin Abdul Aziz who in turn, in 1962, sold it to the Vermont Realty Ltd. of which the defendant was the managing director. In 1962 the other lot was sold to the plaintiff. The plaintiff claimed that the disputed portion formed part of the lot sold to him. The defendant pleaded that he had been in possession of the disputed portion since 1945.